

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

ROOT CAUSES MEDICINE, LLC
A Texas limited liability company and
Derrek W. Guillory, M.D., P.A. d/b/a
Root Causes Medicine, a Texas
Professional Association

Plaintiffs,

v.

VIKKI PETERSEN d/b/a ROOT
CAUSE MEDICAL CLINIC AND
HEALTHNOW MEDICAL CENTER,
INC.
A California corporation

Defendants.

Civil Action No. _____

COMPLAINT

1. Plaintiffs, Root Causes Medicine, LLC, Derrek W. Guillory, M.D., P.A. d/b/a Root Causes Medicine, seeks protection against a threat of trademark litigation by Defendants Vikki Petersen d/b/a Root Cause medical Clinic and Healthnow Medical Center, Inc. Defendants seek to prevent Plaintiffs from continuing to offer its services under the name “ROOT CAUSES MEDICINE”, which name Plaintiffs have used since at least as early as January 2, 2017. Defendants have warned Plaintiffs in writing of its allegations that Plaintiffs are infringing Defendants’ service mark and have threatened to sue Plaintiffs. The court should enter a judgment that Plaintiffs have not violated Defendants’ rights.

JURISDICTION AND VENUE

2. This court has subject matter jurisdiction over this action under 15 U.S.C §1121 and 28 U.S.C §§1331 and 1338 because it involves substantial claims under the Lanham Act.

3. Venue is proper in this court pursuant to 28 U.S.C § 1391 as Defendants have made threats against Plaintiffs who transact business in this district and the claims alleged arose and are continuing to occur in this district.

PARTIES

4. Plaintiffs, Root Causes Medicine, LLC is a corporation organized and existing under the laws in the state of Texas, having an office and place of business located at 19026 Ridgewood Parkway, Suite 119, San Antonio, Texas 78259.

5. Plaintiff Derrek W. Guillory, M.D., P.A. is a Texas Professional Association doing business as “Root Causes Medicine”, which is located at 19026 Ridgewood Parkway, Suite 119, San Antonio, Texas 78259.

6. Upon information and belief, Defendant Vikki Petersen, d/b/a Root Cause Medical Clinic, is an individual doing business under an entity known as Root Cause Medical Clinic, which is located at 20398 Blauer Drive, Saratoga, California 95070.

7. Upon information and belief, Defendant Healthnow Medical Center, Inc. is a California corporation having an office and place of business at 20398 Blauer Drive, Saratoga, California 95070 and may be served through their registered agent for service of process of Northwest Registered Agent, Inc., which is located at 1267 Willis Street, Suite 200, Redding, California, 96001.

STATEMENT OF FACTS

8. Derek W. Guillory received a Bachelor of Science from Baylor University in 1997, graduating Magna Cum Laude. In 2001, he graduated from the University of Texas Southwestern Medical Center in Dallas with a degree in medicine.
9. Dr. Guillory completed his residency at Parkland Health and Hospital System in 2004.
10. On January 15, 2004, Dr. Guillory filed for Derrek Guillory M.D., P.A. to be established as a Texas Professional Association.
11. Dr. Guillory continued his medical training in emergency medicine at the University of Texas Southwestern Medical Center. Dr. Guillory has been continuously board certified by the American Board of Emergency Medicine since 2005.
12. In 2015 Dr. Guillory became one of the first Certified Functional Medicine Practitioners in Texas.
13. On January 2, 2017, Dr. Guillory opened a medical office at 503 Avenue A, Suite 118, San Antonio, TX 78215, but later moved to 19026 Ridgewood Parkway, Suite 119, San Antonio, Texas 78259, both under the name “Root Causes Medicine”. The business was formally organized as a Texas limited liability company on February 16, 2017 under the name “Root Causes Medicine, LLC”. The transition from the sole proprietorship to the LLC is occurring.
14. Root Causes Medicine, LLC is a functional and regenerative medical practice devoted to discovering and treating the underlying causes of a disease or illness.
15. The providers at Root Causes Medicine, LLC look at the individual as a whole person and look at the unique causes that are contributing to an individual’s illness.

16. The functional health method used by Root Causes Medicine, LLC provides a new way for medical practitioners to consider complex problems and provides a new way for patients to manage their illness.

17. At about the same time that Dr. Guillory opened his practice under “Root Causes Medicine”, he filed on January 13, 2017 in the United States patent and Trademark Office service mark Application Serial Number 87/301,038 to register the mark ROOT CAUSES MEDICINE for “medical services focusing on optimal functioning of the body and its organs involving systems of holistic or alternative medicine”.

18. The Examiner in the United States Patent and Trademark Office cited numerous examples of others using similar words to Root Cause to describe their medical treatment programs.

19. Because the Examiner in the United States Patent and Trademark Office rejected the application to register ROOT CAUSES MEDICINE as “merely descriptive”, Dr. Guillory allowed the application to go abandon, receiving a “Notice of Abandonment” on or about November 7, 2017.

20. On February 5, 2017, Defendant Healthnow Medical Center, a California corporation, located at 1309 South Mary Avenue, Sunnyvale, California 94087, filed Application Serial Number 87/324,920 for “alternative medical services...”, which application issued on March 27, 2018 as Registration No. 5,431,093. A copy of the registration is attached hereto as Exhibit A.

21. During the prosecution of Application Serial Number 87/234,920, the prior Application Serial Number 87/301,038 by Dr. Guillory was cited as a blocking application if it subsequently issued as a registration.

22. After Plaintiffs' prior application for the mark ROOT CAUSES MEDICINE, Serial Number 87/301,038, went abandon, Defendants' application Serial Number 87/324,921 was reactivated.

23. The Examiner for Defendants' Application Serial number 87/324,920 rejected the application because the words ROOT CAUSE MEDICAL CLINIC were merely descriptive. In response to the Examiner's rejection, Defendants disclaimed any exclusive right to use "ROOT CAUSE MEDICAL CLINIC" apart from the mark as shown. Thereafter the registration issued. See Exhibit A.

24. Twice, Examiners in the United States Patent and Trademark Office rejected (a) ROOT CAUSES MEDICINE and (b) ROOT CAUSE MEDICAL CLINIC as being merely descriptive. Neither Plaintiffs nor Defendants argued against the rejections.

25. Shortly before December 12, 2019, Dr. Guillory received a phone call from Vikki Petersen complaining about his use of ROOT CAUSES MEDICINE as the name of his medical practice and on his website. See Exhibit B. Ms. Petersen followed up the telephone conversation with an email. See Exhibit C.

26. After a reply, Dr. Guillory through his practice as Root Causes Medicine, LLC, received on December 13, 2019, an email from Defendants' attorney Michael Indrajana. See Exhibit D. Among other things Mr. Indrajana stated "we will have to file a lawsuit against your practice to enforce our trademark rights". At another point in the email Mr. Indrajana stated "We will also potentially have to bring the lawsuit in California in the U.S. District Court in the Northern District of California".

27. On December 30, 2019, Mr. Indrajana again sent Dr. Guillory an email requesting Dr. Guillory to “cease and desist from any further infringing activities” further stating we “have to enforce our trademark by means of legal action”...See Exhibit E.

DECLARATION OF NO TRADEMARK INFRINGEMENT, UNFAIR COMPETITION
OR DILUTION

28. Plaintiffs reallege and incorporate by reference all the allegations in paragraphs 1 - 27 inclusive, as though fully set forth.

29. Plaintiffs deny that their use of ROOT CAUSES MEDICINE as a name for a medical practice violates whatever federal or state rights Defendants might have.

30. Plaintiffs deny that Defendants might have any rights to the words ROOT CAUSE MEDICAL CLINIC because:

- (a.) The words are descriptive of Defendants’ services and
- (b.) The words were disclaimed in the application that resulted in Registration No. 5,431,093. See Exhibit A.

31. The words ROOT CAUSE cannot be protected by anyone when used in connection with any type of medical treatment facility, whether a traditional medical practice or holistic medical practice.

32. If Defendants have any rights to the words “ROOT CAUSE” (which they do not), Defendants have not protected those rights because numerous third parties are using the words “ROOT CAUSE” in connection with medical treatment facilities, particularly, but not limited to, those that practice “holistic” medicine.

33. Defendants had actual notice of Plaintiffs' use of ROOT CAUSES MEDICINE when it was cited against Defendants' application. Since that date, Plaintiffs has continued to build its business and good will under its name ROOT CAUSES MEDICINE. Defendants are thus barred by the Equitable Doctrines of Laches, acquiescence and Estoppel from asserting violation of their rights.

34. Based on the information and belief, Defendants know of many others that use ROOT CAUSE or similar words to describe different treatment facilities, whether holistic or traditional medicine.

35. Defendants' assertions that Plaintiffs are violating their rights irrefutably injures Plaintiffs and adversely affects Plaintiffs' business and the large investment Plaintiffs have made in their business and its goodwill. These assertions will continue to adversely affect Plaintiffs' business unless prevented by this court.

36. Based upon the allegations above, there is an actual and substantial controversy between Plaintiffs and Defendants, who have adverse legal interest. Defendants have made clear to Plaintiffs its belief that its mark ROOT CAUSE MEDICAL CLINIC is currently being infringed by Plaintiffs' use of its name ROOT CAUSES MEDICINE, and Plaintiffs have denied any wrong doing. The dispute between Plaintiffs and Defendants is substantial, definite and immediate and not hypothetical.

37. In order to resolve the legal and factual questions raised by Defendants and to afford relief from the uncertainty and controversy which Defendants' assertions have precipitated, Plaintiffs are entitled to a Declaratory Judgment of its rights under 28 U.S.C. § 2201-2202.

38. Plaintiffs deny there is a likelihood of confusion between Plaintiffs' use of ROOT CAUSES MEDICINE and Defendants' use of composite mark including the words ROOT

CAUSE MEDICAL CLINIC based upon the physical distance between the separate offices. Plaintiffs' office is located in San Antonio, Texas and Defendants' office is located in Saratoga, California.

REQUEST FOR RELIEF

Plaintiffs request that the Court declare and that a judgment be entered that:

1. Plaintiffs' use of ROOT CAUSES MEDICINE does not violate Defendants' rights under the trademark laws of the United States or any other laws.
2. Plaintiffs' use of ROOT CAUSES MEDICINE for its business does not have a likelihood of confusion with Defendants' use of ROOT CASUE MEDICAL CLINIC, with or without logo, because of the physical distance between the different facilities.
3. Plaintiffs' use of ROOT CAUSES MEDICINE is descriptive of its business.
4. Plaintiffs' use of ROOT CAUSES MEDICINE for its business does not dilute any of Defendants' rights.
5. Defendants are barred by laches, acquiescence and estoppel from asserting any likelihood of confusion between the respective marks of Plaintiffs and Defendants.
6. Plaintiffs have the right to use ROOT CAUSE MEDICINE in connection with its medical practice, free from interference from Defendants, their officers, agents, employees, attorneys, privies, representatives, successors and assigns, and any and all persons acting in active concert or participation with, or under authority from Defendants.
7. Defendants, its officers, agents, employees, attorneys, privies, representatives, successors and assigns, and any and all persons acting in active concert or participation with, or under authority from Defendants be permanently enjoined from:

- a. Interfering with, or threatening to interfere with, use of the words ROOT CAUSES MEDICINE by Plaintiffs or their related companies, successor or assigns in connection with its business; and
 - b. Instituting or prosecuting any suit or other proceeding placing in issue the right of Plaintiffs, or any related companies, successors or assigns to use the words ROOT CAUSES MEDICINE, with or without logo, in connection with its medical practice.
8. Plaintiffs be awarded their attorney's fees against Defendants under 15 U.S.C. § 1117, this case being exceptional.
9. Plaintiffs' be awarded pre and post judgment interest;
10. Plaintiffs be granted such other and further relief as may be just.

Dated this 30 day of January, 2020.

Respectfully submitted,

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